

TRIPURA GAZETTE

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**PART--I-- Orders and Notifications by the Government of Tripura,
The High Court, Government Treasury etc.**

**GOVERNMENT OF TRIPURA
HEALTH AND FAMILY WELFARE DEPARTMENT**

No.F. 3 (10-87)/IEC/TSACS/ RajyaSabha Bill/2014-15

Dated: 28/10/2022

NOTIFICATION

Whereas, the spread of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) is spreading all over the world rapidly, seriously affecting human health and human rights of a person to live with good health, thereby causing negative impact upon the society and it calls for urgent and effective measures for care, support and treatment of affected persons;

And whereas, the Government of India has brought into force the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (Central Act no. 16 of 2017);

And whereas, Section 23, 24, 25 & 34 of the said Act provide for appointment, terms & conditions of services of Ombudsman, the manner of making the complaints to the Ombudsman, inquiring into the complaints by the Ombudsman and the manner of recording pseudonym in legal proceedings etc;

Now therefore, the State Government, in exercise of its powers conferred under Section 49 of the said Act, hereby makes the following Rules to carry out the aforesaid provisions of the Act "The Tripura Human Immunodeficiency Virus & Acquired Immune Deficiency Syndrome (Ombudsman and Pseudonymisation) Rules, 2022."

Chapter – I

Preliminary

1. Short title, extent and commencement:-

- (1) These Rules shall be called the Tripura Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Pseudonymisation) Rules, 2022";
 - (2) They shall come into force on date of their publication in the Official Gazette.
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2. Definitions:-

In these rules, unless the context otherwise requires:-

1. “Act” means the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (Central Act No. 16 of 2017);
2. “Ombudsman” means an officer by virtue of the post of Director, Family Welfare and Preventive Medicine designated by the Government as the case may be, under section 23 of the Act.
3. “Assistant Ombudsman” means an officer by virtue of the post of Chief Medical Officer designated by the Government as the case may be,
4. “State Government” means Government of Tripura.
5. “Opportunistic infections” means an infection by a micro organism (bacteria, virus, fungus, and protozoa) when the body’s immune system is impaired and unable to fight off infection as in AIDS;
6. “ART” means Standard antiretroviral therapy (ART) consists of the combination of antiretroviral (ARV) drugs to maximally suppress the HIV virus and stop the progression of HIV disease;

Chapter – II

3. Diagnostic facilities for HIV/AIDS, Anti-Retroviral Therapy and Opportunistic Infection Management for People Living with HIVCompliance of provisions of the Act.-

- (1) State Government, through Tripura State AIDS Control Society under Health & Family Welfare Department shall Provide free diagnostic services of HIV/AIDS to all individuals in all Govt. Health institutions and shall also ensure that all Private diagnostic Centers provides the HIV testing report to Tripura State AIDS Control Society (TSACS) to ensure quality services provided by Private sector;
- (2) ART drugs shall be provided free of cost to all HIV positive people as per the provisions of the Act and guidelines of National AIDS Control Organization; through all ART/L-ART centers across the state;

(3) Opportunistic Infection (OIs) shall also be managed at the level of Institute having ART centre with State Government's support and it shall be ensured that all Opportunistic Infection drugs are made available as per National AIDS Control Organization (NACO) guidelines free of cost for the People Living with HIV in need from these Institutes as per the provisions of the Act;

(4) All necessary guidelines issue by the Central Government shall be followed by Tripura State AIDS Control Society, in respect of protocols for HIV and AIDS relating to diagnostic facilities, Anti-retroviral Therapy and Opportunistic Infection Management which shall be applicable to all persons and shall ensure their wide dissemination.

Chapter – III

4. Appointment, Selection, Qualification and experience of the Ombudsman&

Assistant Ombudsman:-

(1) The State Government shall designate One Ombudsmen throughout the State and Assistant Ombudsmen for each district within one month of coming into force of these rules.

The jurisdiction shall be in line of existing Administrative Mechanism Government of Tripura. The Office of the Ombudsman shall be situated at the office of Directorate of Family welfare and Preventive medicine and Assistant Ombudsman at the Office of Chief Medical Officer ;

(2) Selection of Ombudsman:-

- a. The Ombudsman and Assistant Ombudsmen shall be designated by the State Government on the recommendation of the Selection Committee constituted by the State Government
- b. The Selection Committee shall be constituted by the Secretary, Health and Family Department, Government of Tripura, by notification;
- c. The Selection Committee shall comprise of the following Members:
 - (i) Chairperson:- Principal Secretary/ Secretary, Department of Health and Family welfare Department, Government of Tripura
 - (ii) Member Secretary:- Project Director, TSACS
 - (iii) Members:-
 - a. An officer of the Law Deptt., not below the rank of Deputy Secretary
 - b. President/ Secretary of State level network of People Living with HIV associations

c. Representatives of civil society/ NGO's/
CBO's(not more than two)

(3) Qualification and experience of Ombudsman& Assistant Ombudsman:-

(A) A person shall not be eligible for being appointed as ombudsman unless –

- (i) he or she is or has been a Graduate or Post Graduate in Medical Service having working experience of not less than 15 (Fifteen) years and registered under Tripura Health Services or having extensive knowledge in matters relating to public health or health delivery systems, or
- (ii) an officer of the State Government from State Health Services not below the rank of a Additional Director, FWPM.

(B) A person shall not be eligible for being appointed as Assistant ombudsman unless –

- (i) he or she is or has been a Graduate or Post Graduate in Medical Service having working experience of not less than 10 (Ten) years and registered under Tripura Health Services or having extensive knowledge in matters relating to public health or health delivery systems, or

(C) The Ombudsman and Assistant Ombudsman, after her/his appointment, may be sent to undergo training on HIV/AIDS and the Act, which shall include sensitization and thorough understanding by experts on the basic science on HIV and AIDS, HIV-related prevention, care, support and treatment, human sexuality, people vulnerability on HIV stigma and discrimination and strategies of risk reduction.

(4) Terms and conditions of services of ombudsman& Assistant Ombudsman:-

(A) The Ombudsman and Assistant Ombudsman shall hold office for a term of three years, and shall be eligible for extension for further period of three year only. Provided that no Ombudsman shall hold office as such after he has attained the age of 65 (Sixty Five) years;

(B) The Government may remove Ombudsman from office if:

- (i) has become physically or mentally incapable of acting as Ombudsman; or

- (ii) has been convicted of any offence or has acquired such financial or other interest which is in the opinion of the Government likely to prejudicially affect such person's functions as Ombudsman; or
- (iii) Has abused the position as to render continuation in office detrimental to the public interest.

Provided that no Ombudsman and Assistant Ombudsman shall be removed from office without giving a reasonable opportunity of being heard in the matter.

- (C) The Ombudsman and Assistant Ombudsman shall not be eligible for other allowances for this activity;
- (D) The Ombudsman and Assistant Ombudsman may resign at any time, by giving one month's notice in writing to the State Government. Such resignation shall come into effect after its acceptance by the State Government;
- (E) Any vacancy of the Ombudsman and Assistant Ombudsman shall be filled in by the State Government by nominate of another person as an Ombudsman within 30 days of the vacancy or prior of vacant post. In case of any long leave taken by the Ombudsman or post remaining vacant for long time, the State Government may assign the charge of such Ombudsman or vacant post of Ombudsman to any other nearby Ombudsman.
- (G) The State Government shall provide to the Ombudsman and Assistant Ombudsman with all necessary support as may be necessary for the efficient performance of his functions. Every office of ombudsman has to assigned one Lower Division Clerk with all basic office infrastructures to perform the duty effective way. The ombudsman may utilize the services of para legal aid clinics and District Legal Service Authority (DALSA)/State Legal Services Authority (SALSA).
- (H) The Ombudsman shall also be an ex-officio member of the State Grievances Redrasal Mechanism constituted under the National HIV Prevention and Care Programme of National AIDS Control Organization.

5. Jurisdiction of Ombudsman and Assistant Ombudsman:-

- (A) Jurisdiction of each Ombudsman shall be specified by notification of State Government, to be published in the State Gazette.
- (B) Orders passed by the Ombudsman shall be binding on all the authorities including Civil Authorities functioning within the jurisdiction of the Ombudsman, who shall assist in their execution
- (C) Ombudsman may take suo motto cognizance to ensure HIV infected or affected person including children are protected
- (D) Jurisdiction of each Assistant Ombudsman shall be specified by notification of State Government, to be published in the State Gazette.

6. Manner of making complaints to Ombudsman and Assistant Ombudsman :-

- (A) Any person may make a complaint to the Ombudsman and Assistant Ombudsman within whose jurisdiction the violation took place.
- (B) A complaint may be made to the Ombudsman and Assistant Ombudsman containing information in accordance to the set of form as per Annexure - I.

The Ombudsman and Assistant Ombudsman may receive complaints from person or via post, telephonically, Via SMS, Whatsapp or online through Centralized Public Grievance Redress and Monitoring System (CPGRAMS) in a manner that protects the confidentiality of the complainant.

7. Manner of inquiring into complaints by Ombudsman & Assistant Ombudsman:-

- (A) The Ombudsman and Assistant Ombudsman shall act in an objective and independent manner when inquiry into complaints made under the Act and these rules;
- (B) On receipt of a complaint or while taking suo motto cognizance, the Ombudsman shall hold an inquiry in such manner as deemed;
- (C) The inquiry shall satisfy the basic principles of natural justice and the complainant shall be given an opportunity to be heard and accused opinion shall be taken into consideration;

- (D) The Ombudsman and Assistant Ombudsman shall conduct the inquiry in a friendly manner and will not use adversarial or accusatory words or words that adversely impact the dignity or self esteem of the complainant;
- (E) While inquiry into complaint under the Act and these rules, the Ombudsman and Assistant Ombudsman shall give a reasonable opportunity to concerned parties to be heard and in appropriate cases receiving evidence on affidavits, Provided that cross-examination shall be permitted in inquiries before the Ombudsman and Assistant Ombudsman;
- (F) The Ombudsman and Assistant Ombudsman may, in the interests of justice, take the assistance of experts, including protected persons and persons vulnerable to HIV, and persons working in the fields of HIV and AIDS, public health or health delivery systems;
- (G) The Ombudsman shall have the power to pass interim orders in cases of medical emergency including directing admissions, operations or treatment and the provision of universal precautions: Provided that the Ombudsman shall, as soon as may be, after the passing of such interim orders, consider the representations of the parties by giving them a reasonable opportunity to be heard, and in appropriate cases may receive evidence on affidavits, and pass appropriate orders;
- (H) The Ombudsman and Assistant Ombudsman shall, within a period of thirty days of the receipt of the complaint and after giving an opportunity of being heard to the parties, pass such order, as he deems fit, giving reasons there for (as per section 26 of Act);
- (I) The Ombudsman and Assistant Ombudsman shall inform the complainant of the action taken in relation to the complaint and shall be responsible for ensuring that the complaints, their number and nature, and the action taken and orders passed in relation to such complaints are published on the website of the Tripura State AIDS Control Society. The Ombudsman shall preserve strict confidentiality of the protected person while publishing the orders on the website. The Assistant Ombudsman after redress the grievance forward a copy to the office of Tripura State AIDS Control Society for publishes in the website;
- (J) The Ombudsman and Assistant Ombudsman shall provide all parties to the complaint with copies of the written order within 7 days of deciding the complaint;

(K) The Ombudsman and Assistant Ombudsman shall inform the parties to the complaint of their right to seek judicial review from the Ombudsman's or Assistant Ombudsman order;

(L) The Ombudsman and Assistant Ombudsman shall submit a quarterly report to Department of Health & Family Welfare, Department of Legal & State AIDS Control Society on the nature of disposal of cases and pendency of cases to the State Government in the manner as may be prescribed, for review of pendency of cases;

(M) All proceedings before the Ombudsman shall be deemed to be judicial proceedings within the meaning of Section 193 of the Indian Penal Code (45 of 1860).

(N) Orders passed by Ombudsman and Assistant Ombudsman.-

The Ombudsman and Assistant Ombudsman on being satisfied through the inquiry, may, pass one or more of the following orders, namely:—

- a. Pass orders for the withdrawal and rectification of the violation;
- b. pass orders directing the person who has committed the violation to undergo a fixed period of counseling related to the violation committed and a fixed period of social service, which shall include working with a non-governmental organization working on HIV, a protected person's network, or the appropriate authority under the State Government;
- c. Direct specific steps or special measures or both to be taken;
- d. Direct any person who has committed the violation to make regular reports to the Ombudsman and Assistant Ombudsman regarding implementation of the Ombudsman's order;
- e. Make such orders as to cost as are considered reasonable and such cost shall be utilized for welfare of HIV positive people;
- f. Directions to healthcare provider or persons or institutions or facilities in whose care the child affected by HIV or HIV-affected person or HIV-positive person is placed, regarding care, protection and rehabilitation of the said person, including directions relating to immediate treatment and services such as medical attention, therapy, psychiatric and psychological support including need-based counseling, occupational therapy etc.;
- g. Any other order related to any other function;

8. Manner of maintaining records by Ombudsman and Assistant Ombudsman:-

- (A) Immediately on receipt of a complaint, record by assigning a sequential unique complaint number in a register maintained for that purpose in physical or computerized form;
- (B) On receipt of the complaint, acknowledge it by sending the unique complaint number by SMS, e-mail or manual receipt to the complainant;
- (C) Record the time of the complaint and the action taken on the complaint in the register; and
- (D) Maintain the register of the complaints in a manner that ensures confidentiality of data as specified in the provision to Rule 6 (9).

9. Manner of recording pseudonym and providing suppression of identity in legal proceedings:-

- (A) In any legal proceeding before a court, on an application made by a person in the interests of justice, the proceeding or any part thereof be conducted by suppressing the identity of such protected person, the Presiding Officer of the court shall direct all parties involved to:-
 - (i) File one copy of the documents bearing the full name, identity and identifying details of the parties concerned before the court, which shall be kept in a sealed cover and in safe custody with the Registrar; and
 - (ii) Serve one copy of documents bearing the full name, identity and identifying details of the parties concerned upon other parties in the proceeding with a requirement to ensure that the full name and identity of the parties concerned are kept confidential.
- (B) The Presiding Officer shall provide pseudonyms to protected persons involved in the legal proceedings in the documents filed before the court in such manner that the identity and identifying details of the protected person involved in the legal proceedings are kept confidential.

- (C) The Presiding Officer shall place the sealed covered documents before the court on the first date the legal proceedings listed for hearing before the court, if so required by the court.
- (D) The protected person involved in the legal proceeding and their identifying details shall be displayed in pseudonym in all documentation generated by the court in relation to the legal proceeding, including listing of the case on the court interim orders and final judgments.
- (E) The identity and identifying details of the protected person involved in the legal proceeding shall not be revealed by any person or their representatives including assistant and staff.
Exception: Where in the interest of justice the name and identity of the protected person needs to be revealed to a third party; it shall only be allowed by an order of the court.
- (F) Printing and publishing any matter in relation to the aforementioned legal proceedings shall be lawful only if the same is done by ensuring the suppression of identities of the parties in the legal proceeding.

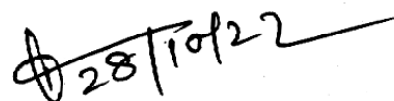
10. Welfare measures for People Living with HIV or AIDS:-

- (A) The State Government shall Provide Social pension scheme to all persons infected or affected by HIV or AIDS. Amount of pension shall be as per State Government norms
- (B) State Government shall ensure free Health care services (laboratory services, treatment of other diseases, including blood transfusion services if required) for all HIV infected and affected persons including Children.
- (C) State Government shall provide free transport services (TRTC) to all People living with HIV.
- (D) The Ombudsman and Assistant Ombudsmen shall establish effective linkages with Child Welfare Committee and transfer the cases falling in their jurisdiction.

11. Removal of difficulties:-

If any ambiguity, confusion or difficulty arises in giving effect to any provision of these Rules, the State Government may, by order, not inconsistent with the provision of the Act and these Rules, issue necessary interpretation or clarification to remove such difficulties.

Provided that, no such order shall be issued after the expiry of a period of two years from the date of commencement of these Rules.



Deputy Secretary to the
Government of Tripura

Annexure – I

Form for making Complaint to Ombudsman & Assistant Ombudsman

1. Date of Incident _____

2. Place of Incident _____

3. Description of Violation

4. Person responsible for the violation _____

Signature/Thumb Impression

Name:

Date:

For Official Use only:

Unique Complaint Number: